

NOTES TO THE TABOR REPORT

NOTE 1. BASIS OF ACCOUNTING

Pursuant to Article 77 of Title 24, Colorado Revised Statutes, this report is prepared in accordance with generally accepted accounting principles (GAAP) except where an irreconcilable difference exists between GAAP, and state statute or the provisions of Section 20, Article X of the state constitution (TABOR).

The accounting principles used by the State are more fully described in the State's Comprehensive Annual Financial Report available from the State Controller's Office.

NOTE 2. DEFINITION OF THE DISTRICT

TABOR defines the district as "the state or any local government, excluding enterprises." It further defines enterprise as "a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of annual revenue in grants from all Colorado state and local governments combined."

The General Assembly, for the purpose of implementing TABOR, stated in C.R.S. 24-77-102(16)(a) that "state" means the central civil government of the State of Colorado, which consists of the following:

- (I) the legislative, executive, and judicial branches of government established by Article III of the state constitution;
- (II) all organs of the branches of government specified in subparagraph (I) of paragraph (a) of this subsection (16), including the departments of the executive branch; the legislative houses and agencies; and the appellate and trial courts and court personnel; and
- (III) state institutions of higher education.

(b) "state" does not include:

- (I) any enterprise;
- (II) any special purpose authority.

The General Assembly has designated the State Lottery, the Guaranteed Student Loan Program, the Division of Correctional Industries, the Division of Wildlife, the State Fair Authority, Colorado Student Obligation Bond Authority, the Clean Screen Authority, the Statewide Tolling Authority, and the State Nursing Homes as enterprises excluded from the district. It further set up a mechanism in statute by which the governing boards of the institutions of higher education could designate certain auxiliary operations as enterprises, also exempt from TABOR.

Although the General Assembly has designated certain enterprises as exempt from TABOR, they must also meet the criteria of a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of annual revenue in grants from all Colorado state and local governments combined annually.

NOTE 3. DEBT

Certificates of Participation, which are used by the State for long-term lease purchases, are not considered debt of the State for purposes of this report as provided by C.R.S. 24-30-202(5.5).

In interrogatories submitted by the General Assembly regarding House Bill 99-1325, the Colorado Supreme Court ruled that Transportation Revenue Anticipation Notes (TRANS) issued by the Colorado Department of Transportation do not constitute debt of the State as defined in Section 3, Article XI of the constitution.

However, the Supreme Court ruled that they are a multiple-fiscal year obligation as defined by Section 20, Article X of the constitution, thus requiring an election before they could be issued. In November 1999 the voters approved the issuance of \$1.7 billion of TRANS.

NOTE 4. EMERGENCY RESERVES

TABOR requires the reservation, for declared emergencies, of 3 percent or more of the Fiscal Year Spending, excluding debt service payments. This requirement for FY 2003-04 is \$249,959,719.

The State has designated \$26,231,928 of the Tobacco Litigation Settlement Fund, \$11,293,740 of the Species Conservation Fund, \$258,368 of the Controlled Maintenance Trust Fund, \$11,567,428 of the Colorado River Recovery Program Fund, \$4,742,170 of the Fish & Wildlife Resources Fund, and \$118,107,841 of the Severance Tax Trust Fund for this reserve.

The remaining amount of \$77,758,245 needed to meet the emergency reserve requirement comes from the non-capital assets and the Capital Assets, Net of Related Debt, in the Wildlife Fund. In the event of an emergency that exceeded the financial assets in the reserve, the capital assets would have to be liquidated to satisfy the constitutional requirement.

NOTE 5. STATUS OF REFUNDING

There was no refund resulting from the State's computation of Fiscal Year 2003-04 or Fiscal Year 2002-03 fiscal year spending.

A suit has been filed in state court challenging the constitutionality of \$442.7 million of transfers from various cash funds to the

General Fund made in and after Fiscal Year 2001-02 to mitigate shortfalls of general purpose revenues. The suit claims that the transfers required increases in fees to replenish the cash funds and these fees were actually tax increases not approved by the voters as required by TABOR. The plaintiffs seek replenishment of the cash funds from the General Fund and a halt to this practice in the future.

NOTE 6. OTHER SOURCES AND ADDITIONS

This line item consists primarily of \$312.8 million of refunding bond proceeds for highway construction, \$255.0 of bond proceeds of new issues for highway construction, \$781.7 million of pension and other employee benefit trust fund additions by participants and employers, and \$20.4 million of reimbursements of prior year expenditures.

Other sources include \$1.8 million in capital lease financing, \$8.1 million from the Great Outdoors Colorado Authority to the Department of Natural Resources, \$1.7 million in accounts payable reversions and \$21.5 million in other exempt revenues and required governmental accounting entries.

NOTE 7. VOTER APPROVED REVENUE CHANGES

The voters in the 1998 general election approved a citizen initiated law, C.R.S. 25-8-501.1, Regulation of Commercial Hog Facilities, adopting the permit fee. The State collected \$164,080 and \$145,803 from this revenue in Fiscal Years 2003-04, and 2002-03, respectively.

The voters in the 2000 general election approved a citizen initiated amendment that added Section 14 to Article XVIII of the state

constitution. This amendment allowed the use of marijuana for medical purposes and authorized the Department of Public Health and Environment to charge a fee for the issuance of a permit for such purpose. The State collected \$52,762 and \$33,937 from this revenue source in Fiscal Years 2003-04 and 2002-03, respectively

The voters in the 2000 general election approved a citizen initiated amendment that added Section 17 to Article IX of the state constitution. This amendment created the State Education Fund and shifted the revenues from a tax of one-third of one percent on taxable income of individuals, corporations, estates, and trusts to this fund. It also exempted that revenue from TABOR. The amendment was effective January 1, 2001 and resulted in \$280,482,461 and \$245,226,044 of revenues being excluded from Fiscal Year Spending in Fiscal Years 2003-04 and 2002-03, respectively.

NOTE 8. DISTRICT RESERVES

District reserves are the cumulative fund balances of the State, excluding the capital assets and non-fund liabilities of the governmental funds and fund balances of the exempt enterprises. The majority of these fund balances are not available for appropriation due to legal and contractual restrictions.

NOTE 9. PRIOR PERIOD FUND BALANCE ADJUSTMENTS

The increase of \$56,006,283 in the District beginning fund balance consisted primarily of an increase of \$43,040,533 required by the Governmental Accounting Standards Board Technical Bulletin regarding the accrual of tobacco damage award based on the underlying shipment of tobacco products.

Other changes included a \$1,859,999 increase at the University of Colorado Health Sciences Center, a \$4,548,190 decrease at Colorado State University for post-closing entries made to the State's financial statements in FY 2003 that were not timely enough for the FY 2003 TABOR report, an increase of \$16,116,448 at Fleet for the over depreciation of their vehicles that were being purchased through capital leases, \$775,164 increase at the Auraria Higher Education Center that also was received after the auditor's opinion for FY 2003, a decrease of \$1,733,077 at the Secretary of State's Office for revenue accrued in prior years that should have been deferred, and a \$495,406 increase for revenue at the Department of Regulatory Agencies that was incorrectly deferred in prior years.

NOTE 10. ENTERPRISE QUALIFICATIONS

In Fiscal Year 2002-03 the State Nursing Homes, with the exception of the State Nursing Home at Walsenburg, were disqualified as a group because of a substantial capital contribution by the State to the Fitzsimmons State Nursing Home. These Nursing Homes qualified as exempt enterprises in Fiscal Year 2003-04.

In addition the State Fair Authority qualified as an exempt enterprise after several years of receiving state and local government support of more than 10 percent of their revenues. The Statewide Tolling Authority in the Department of Transportation, an exempt enterprise, had financial activity beginning in FY 2003-04 that requires its inclusion as a distinct enterprise.

NOTE 11. POST AUDIT ENTRIES

In Fiscal Year 2002-03 a late post closing entry was made to the State's books for a \$177,686 decrease to interest earned at the Auraria Higher Education Center. This entry was made after the audit of the TABOR computation and thus would have reduced TABOR revenues in Fiscal Year 2002-03 if it had been made more timely.

NOTE 12. SPENDING LIMIT ADJUSTMENTS

The decrease of \$276,083 for spending limit adjustments is the net result of six errors in Fiscal Year 2001-02 revenues:

Historical Society understated non-exempt interest it earned on gaming revenues transferred to it by \$1,919,339. The interest was originally recorded by the agency as exempt.

The Department of Human Services understated non-exempt revenues when it recorded \$444,441 of matching local school district funds.

The Department of Regulatory Agencies understated non-exempt revenues when it deferred \$105,200 that should have been recorded as earned revenue.

The Department of State overstated non-exempt revenue when it recorded \$310,038 received that should have been deferred or held in custody for others.

The Department of Personnel and Administration overstated non-exempt revenues when it recorded \$1,868,010 employee fees and other revenues for Pension and Other Benefit Trust Funds as not exempt from TABOR. TABOR specifically excludes pensions and trusts.

The Department of Human Services overstated non-exempt revenue when they recorded \$567,015 for Medicaid revenue.

NOTE 13. ENTERPRISE QUALIFICATION

TABOR specifies that qualification and disqualification of enterprises shall change the district base.

The State Nursing homes were disqualified in Fiscal Year 2002-03 but qualified in Fiscal Year 2003-04. This reduced the base by \$23,425,560 for their TABOR nonexempt revenues earned in Fiscal Year 2002-03.

The State Fair Authority was disqualified in Fiscal Year 2002-03 but qualified in Fiscal Year 2003-04 as a TABOR enterprise resulting in a reduction to the base of \$7,852,545 for their TABOR nonexempt revenues earned in Fiscal Year 2002-03.

NOTE 14. SOURCES OF TABOR GROWTH LIMITS

The allowable increase in state fiscal year spending equals the sum of inflation and the percentage change in state population in the calendar year ending six months prior to the start of the fiscal year, adjusted for voter approved revenue changes. Inflation is defined in C.R.S. 24-77-102(8) as "the percentage change in the consumer price index for the Denver-Boulder Consolidated Metropolitan Statistical Area For All Urban Consumers, All Goods, as published by the U.S. Department of Labor."

The percentage change for calendar year 2002 used in this report was provided by the Office of State Planning and Budgeting and consisted of 1.7 percent for population growth and 1.9 percent for inflation.

NOTE 15. GROWTH DIVIDEND

The 2000 Federal Census adjusted the change in the State's population between 1999 and 2000 by 6.0 percent to account for a larger

than estimated population change in the State during the 1990s. If the estimates of the State's population change had been more accurate then the State would have been able to retain larger amounts of the TABOR non-exempt revenues to meet the needs generated by this growth. Thus, the General Assembly passed legislation in the 2002 Session that recaptures the revenues lost because of the error in the population estimates. This is commonly referred to as the growth dividend.

In Fiscal Year 2003-04 TABOR revenues exceeded the allowable 3.6 percent growth by \$374,702,740. Without the growth dividend, the State would either have to refund this amount to the taxpayers, or request that it retain all or a portion of this amount on the November, 2004 ballot. However, by law the State will retain this full amount and add it to the base for computing the Fiscal Year 2004-05 limit. This amount uses 4.9 percent of the 6.0 percent growth dividend leaving 1.1 percent that can be added to the allowable percentage growth in future years.

NOTE 16. FUTURE REFUNDS

In the 1999 regular session, the General Assembly enacted mechanisms to refund Fiscal Year 1998-99 and subsequent years' excess revenue. In succeeding sessions the General Assembly has enacted additional mechanisms to refund the excess revenue. The laws enacted to refund the TABOR liability are:

1. An earned income tax credit of 10 percent of the federal tax credit is available whenever the TABOR refund equals \$63.4 million or more.
2. An income tax credit of the lesser of \$500 or 100 percent of non-reimbursed foster care expenses for foster parents. This is available if the TABOR refund is \$213.6 million or more.
3. A business personal property tax credit, which is available whenever the TABOR refund is \$215.5 million or more.
4. An income tax credit for contributors of matching funds to those qualified individuals who save for post-secondary education, purchase a first home, or start a business. The TABOR threshold is \$223.1 million.
5. An interest, dividend, and capital gains exclusion up to \$1,200 for individuals and \$2,400 for couples. The TABOR threshold is \$329.6 million.
6. An income tax credit through January 1, 2005 to health and dental care providers who practice in certain rural areas. The TABOR threshold is \$334.7 million.
7. An income tax credit that is a percentage of the federal childcare credit. The TABOR threshold is \$340.6 million.
8. An income tax credit for contributions to the Institute for Telecommunications Education. The TABOR threshold is \$373.7 million.
9. A 50 percent sales tax credit for the sale, purchase, storage, use, or consumption of tangible personal property used directly and predominantly for research and development in Colorado. The TABOR threshold is \$382.9 million.
10. A reduction in the annual registration fees for motor vehicles and a 25 percent reduction in the fees for trucks, truck tractors, and other vehicles. The TABOR threshold is \$387.6 million.
11. An income tax credit for contributions to high technology scholarships. The TABOR threshold is \$387.6 million.
12. An income tax deduction for charitable contributions in excess of \$500 made by individuals who claim the standard deduction. The TABOR threshold is \$410.9 million.

13. An extension of mechanism number 5 changing the maximums to \$1,500 for individuals and \$3,000 for couples in interest, dividends, and capital gains excludable from state income taxes. The TABOR threshold is \$410.9 million.
14. A sales tax exemption for certain pollution control devices. The TABOR threshold is \$410.9 million.
15. A sales tax refund when the sales tax rate exceeds 0.01 percent and is imposed on new or used commercial trucks or other vehicles that are used in interstate commerce and have a gross weight of more than 26,000 pounds. The TABOR threshold is \$410.9 million.
16. An income tax credit for eligible agricultural value-added cooperatives. The TABOR threshold is \$427.2 million.
17. An income tax credit for the cost of health benefit plans not paid by the employer or deducted from the individual's federal adjusted gross income. The TABOR threshold is \$469.7 million.
18. An expansion of the capital gains modification to include capital gains realized in tax years beginning on or after January 1, 1999, as well as a reduction of the holding period from five years to one year. The TABOR threshold is \$505.0 million.
19. Any remaining amount is given to all full-year Colorado residents 18 years and older as a refund of sales taxes. The sales tax refund is a fixed amount for each of six tiers of federal adjusted gross income. The Department of Revenue calculates the amount of the individual refund for each tier as a statutory percentage of the total sales tax refund divided by the number of anticipated taxpayers in each tier.

Since the State does not have excess revenues in Fiscal Year 2003-04, none of the statutory refund mechanisms will be used until the State is required to make a refund of future year's excess revenues.